Supreme Court, U.S.
FILED

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In the

SUPREME COURT OF THE UNITED STATES

October Term, 1993

PEGGY BROWN

Petitioner,

v.

JOHN BROWN

Respondent,

PETITION FOR WRIT OF CERTIORARI TO THE ILLINOIS SUPREME COURT

Peggy Brown
2102 Woodhavens Dr.
Bloomington, IL 61701
H - 309-829-3463
W - 309-828-4315

QUESTIONS PRESENTED FOR REVIEW

I. IF THE UNITED STATES SUPREME COURT UPHOLDS A WOMAN'S DECISION WHETHER OR NOT TO TERMINATE A PREGNANCY, DOES HER DECISION OF BIRTH COMPROMISE FUTURE CONSTITUTIONAL RIGHTS GUARANTEED BY THE UNITED STATES CONSTITUTION FOR BOTH MOTHER AND CHILD, ESPECIALLY THE NINTH AND FOURTEENTH AMENDMENTS, IF THE FATHER REJECTS BEGETTING A CHILD AND DEMANDS ABORTION OR DIVORCE INSTEAD OF LIVE BIRTH?

II. SHOULD THE STATE COURT BE PERMITTED TO ARBITRARILY RESTRICT THE CONSTITUTIONAL RIGHTS OF THE MOTHER AND CHILD UNDER THESE SPECIAL CIRCUMSTANCES OF BIRTH THROUGH THE ENFORCEMENT OF FUTURE ORDERS CAUSING PHYSICAL, EMOTIONAL, AND FINANCIAL IMPOVERISHMENT DUE OR PARTLY DUE TO GENDER BIAS OR POOR USE OF DISCRETION?

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OPINIONS BELOW

Petition for Leave to Appeal from the Illinois Appellate Court, Fourth District, No. 4-92-0607, there heard on appeal from the Circuit Court of McLean County, Illinois, No. 87-D-35, Honorable Luther Dearborn Judge Presiding.

The Illinois Appellate Court's opinion was filed on May 20, 1993. On July 1, 1993, Peggy Brown filed a Petition for Rehearing in the Fourth District Appellate Court, which was denied on July 12, 1993. On July 27, 1993, Peggy Brown filed a Notice of Intent to Appeal to the Illinois Supreme Court. The motion was denied on November 17, 1993.

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STATEMENT OF JURISDICTION

Jurisdiction is founded upon 28 USC 1254(1,2).

CONSTITUTIONAL PROVISIONS INVOLVED

Article Six, Clause 2

"The Constitution - shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding."

AMENDMENT 9

Rights Retained by the People

The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people.

AMENDMENT 14

Civil Rights

This amendment was proposed on June 13, 1866, and ratified on July 9, 1868.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are

citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

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STATEMENT OF FACTS

The Appellate Court's opinion to affirm the Trial Court Order of Judge Dearborn was filed on May 20, 1993. The particular Trial Court Order that brought this case to the Fourth District Appellate Court denies and trivializes Petitioner's Constitutional rights for choosing birth over abortion, disregards the circumstances and consequences of this

particular child's birth, lifted a ban on restricted visitations without provisions to re-evaluate what effect the changes would have on a young girl's life, Lyons v. Lyons, 228 Ill. App. 3d 407 (5th Dist. 1992) affirmed a decision to deny the female child, child support, held little regard for the child's new life standard after having been uprooted once before through divorce, Regan v. Regan, Ill. Dec. 153, Ill. App. 3d So., 368 N.E.2d 552 (1977), is a rigid and uncompromising order penalizing the child of a happy standard of childhood, is a punitive order and is being used as a punishment to restrict Petitioner's mid-life years, Solomon, 40 Ill. Dec. 197 (1980), reaffirms the strong gender bias in the Illinois Courts that the Gender Bias Study of 1990 addresses, and neglects to once again release and resolve the tension and

conflict that exists in Appellate Case Law and Illinois Supreme Court Rulings regarding children as property and the statutory best interest of the child laws for all children in Illinois, not just a select few. Coons v. Wilder, 93 Ill. App. 3d 127 (1981).

Petitioner seeks both declaratory and injunctive relief because of the constitutional rights the Illinois Courts have denied to her and her daughter. This is not a domestic case, it is one which demands constitutional clarification. "Your right to swing your fist stops where my nose begins."[1]

Although a married woman, Petitioner, Peggy Brown, acted on the decision of birth over her husband's demand of abortion or divorce, and thus as an

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[1]Warren E. Berger, "A Constitution Week Lesson", (1990)

individual person is entitled to protection under the law as an individual and not as a couple. Alexander v. Alexander, D.C.S.C. 1956, 140 F. Supp. 925.

Because Respondent and Petitioner have grave and different views on abortion, Petitioner chose to give birth to her child, knowing the consequence, as stated by the Respondent, would be divorce. It is clear that the Supreme Court of the United States upholds both the Fourteenth and Ninth Amendments respecting a women's decision whether or not to terminate a pregnancy.

It is extremely important that this honorable Supreme Court understand that the pregnancy of the child, Jill, is a significant fact in the litigation. The record does clarify and support this important fact through testimony and

interrogatories and that the conflict and existence of the pregnancy, then child, had already "fractured the family structure."

Respondent put the Petitioner through a distressful life from the pregnancy through the divorce. Now with punitive court orders, Petitioner will now have a limited and very stressful future.

After childbirth, Petitioner was reluctantly involved in divorce litigation. Due to the stressful circumstances surrounding the child's birth, Petitioner was forced to compromise issues. The custody and visitation agreement gave visitation decisions left for the custodial parent to decide; Petitioner having the daughter, Respondent having the three sons. It also included that all holidays would be with the custodial parent unless otherwise agreed

to by the custodial parent. In addition, under duress from the pregnancy, Petitioner agreed to the extremely inequitable property settlement to get the freedom she desired to raise and care for her now born daughter, to provide her share for the future financial needs of their three sons, and end the stress of divorce after childbirth.

Petitioner may have had several months of earnings at the time of divorce. This hardly constitutes the ability to not only raise a child in a new home, but to pay unwanted court costs for the next six years. What Petitioner and her daughter got out of the settlement was meager and showed little respect for the two females in the family.

Petitioner is in this situation because she and she alone wanted to protect this child. Only one parent was

able to decide this child's birth. Roe v. Wade, 410 U.S. 959, 93 S. Ct. 1409. To be denied constitutional rights and the freedoms that go with them is too high a price to pay at this juncture. The court order that was appealed, and the second order while the first was under appeal, continue the duress of this pregnancy for the next ten years of the Petitioner and her daughter's lives and most definitely adds to the burden of bringing a child into the world who was unwanted by her father. The two parents are dissimilar and should be treated accordingly. People v. Davis, Ill. App. 1 Dist. 1991, 583 N.E. 2d 64, 164 Ill. Dec. 510, 221 Ill. App. 3d 1023; City of Indianapolis v. Hargis, 1992, 588 N.E. 2d 496.

After several years of establishing a new standard of living and life style, Petitioner and her daughter's lives were

changed once again. After divorce, litigation was necessary at the time Jarrod Brown ran away from his father's home to live with his mother and sister. Due to restrictions pertaining to the children and the necessity of changing custody pertaining to this son, some modifications were pertinent. Revenge seeking petitions for modifications of the daughter's visitation order, not supported by Illinois law, were indeed begun because of Petitioner's efforts to change custody of her son. Case law further states that visitation should not be used as lever to punish or reward either parent. Solomon, 40 Ill. Dec. 197 (1980), Woods v. Woods, 147 Ill. App. 3d 772, 498 N.E. 2d 906, 908, Gibson v. Barton, 118 Ill. App. 3d 576 (1983).

In light of present circumstance, Jill's life has included family and close

friends and is relevant to her present welfare and best interests. Lawyer, 37 Ill. Dec. 540 (1980), Regan v. Regan, Ill. Dec. 153, Ill. App. 3d So., 368 N.E.2d 552 (1977)

The judgement was to not only lift the ban on restricted overnight visitation immediately, but with increased schedule rigidity. While the case was pending, the Fourth District Appellate Court, another judge, Judge Prall at first ordered the parties to comply with Judge Dearborn's order for visitation which allowed for every other weekend and a Tuesday or Thursday midweek visitation for the parties to work out, plus every other major holiday. On June 28, 1993, Judge Prall made a second interpretation of Judge Dearborn's order which proved to be even more rigid, inequitable, and punitive.

In this order, midweek visitation is set without exception to alternate Tuesdays and Thursdays depending upon whether or not the weekend is with the Father. Because of this, there is never more than three or four consecutive days between visitations with the Father. The order further states that pick-up and delivery be at the home exclusively of the custodial parent. The order further gives one week with the Father during the summer to be expanded to two weeks in later years. These restrictions prohibit flexibility in Jill's life keeping her out of activities she would normally participate in on those days/weekends. Jill was not allowed to attend her own First Communion Family Party because of the new Court order and her father's reluctance to accommodate her religious weekend schedule fully. Tisckos, 161 Ill.

App. 3d 311. They deprive Jill and her Mother the time to travel and spend time with out-of-state relatives. In re McManus, 38 Ill. App. 3d 645, 348, N.E. 29507 (1976) It prevents Petitioner from participating professionally and socially in activities that occur on those days/weekends because alternate arrangements for pick-up and delivery are not allowed. It is inconceivable that the non-custodial parent would have an uninterrupted week with a child, but the custodial parent be denied that privilege. The order also pre-empted the thirty day notice of when the summer week would begin. The order was given to Mrs. Brown by Mr. Brown on June 29, who was obviously aware of the change. The question here is how the law supports only the non-custodial parent to have this knowledge ahead of the custodial parent on such an

important issue and be allowed to hand deliver the court order and not a court appointed person?

The circumstances surrounding a child's birth are important facts to consider. There is no question that Mr. Brown should have rights and responsibilities to the child, Jill. But, at this juncture, Mrs. Brown and Jill should be allowed their rights to continue living in the standard they have been accustomed. These legal proceedings are putting an emotional and financial drain on Mrs. Brown, Jill and Jarrod. Valencia v. Valencia, 4 Ill. Dec. 951 (1977), Ill. App. 3d 741, 360 N.E.2d 1384.

The gender bias in the Illinois Courts is blatant, yet women are entitled to equal protection. See Schattman v.Texas Employment Commission, 459 F2d 32 (Texas 1972). Judge Dearborn comments

several times that Petitioner did not have any rights. Over ten witnesses heard his comments while they listened to the brief reconsideration hearing, and also to his mistakes of the record indicating that he possibly had not fully read the record and had no intention of doing so, gender bias, or facts overlooked. C 362.

In other Appellate decisions in Illinois, the party desiring to modify a visitation order presented some evidence to convince the Court that modification would be in the best interest of the child. Valencia, 1977, 4 Ill. Dec. 951, 46 Ill. App. 3d 741, 360 N.E.2d 1384. Little, if any, evidence was presented to the trial court except that Respondent demanded what he believed to be his rights. Coons v. Wilder (1981), 93 Ill. App. 3d 127, 131, 48 Ill. Dec. 512, 514, 416 N.E.2d 785, 790. Lyons v. Lyons, 228

Ill. App. 3d 407 (5th Dist. 1992). Diehl, 221 Ill. App. 3d 410 (1991). It would seem evident that this should not have happened in light of the original circumstances calling for restrictive visitation, the fact that the two oldest sons have both moved out of their father's home to get away from unpleasant living conditions, C53, C68-72, and that the female child had only spent one night of her entire life with her father and that was just prior to his filing for divorce. The best interest of the child should be the rule for all children in Illinois. Lyons v. Lyons, 228 Ill. App. 3d 407 (5th Dist. 1992).

Petitioner desires the same rights other Mothers and Children are granted in Illinois. Neither order included provisions to re-evaluate what effect the changes would have on the child, Jill.

Cordova v. Chonko, 315 F Supp. 953 (D. C. Ohio, 1970), In interest of L.J., 764 S.W. 2d 89 (No. 1989). The child desires to be with her friends, and to have flexibility and choice with her unincumbered time. It is not natural for any child to be exclusively with a parent from Friday after school until Sunday before bedtime without accommodations made for their childhood activities. LaTour, 181 Ill. Dec. 865, 608 N.E. 2d 1339. She is not permitted similar rights of flexibility and happiness as other children in Illinois.

Petitioner made a mistake not accepting child support immediately after the divorce. She was under duress from the stressful pregnancy that the court record will support. The desire to get out and permanently stay our of court was her desire emotionally and financially.

This Petitioner was psychologically taxed by the pregnancy and the humiliating public treatment she and the child had and still endured from her spouse. The record does prove this and also that marital harmony was non-existent since the knowledge of the pregnancy. C165-166, C168-175, C178, C181-182, C184-187, C191-195, C198-199, C213-214, C221.

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REASONS FOR ALLOWANCE
OF WRIT OF CERTIORARI

I. IF THE UNITED STATES SUPREME COURT UPHOLDS A WOMAN'S DECISION WHETHER OR NOT TO TERMINATE A PREGNANCY, DOES HER DECISION OF BIRTH COMPROMISE FUTURE CONSTITUTIONAL RIGHTS GUARANTEED BY THE UNITED STATES CONSTITUTION FOR BOTH MOTHER AND CHILD, ESPECIALLY THE NINTH AND FOURTEENTH AMENDMENTS, IF THE FATHER REJECTS BEGETTING A CHILD AND DEMANDS ABORTION OR DIVORCE INSTEAD OF LIVE BIRTH?

II. SHOULD THE STATE COURT BE PERMITTED TO ARBITRARILY RESTRICT THE CONSTITUTIONAL RIGHTS OF THE MOTHER AND CHILD UNDER THESE SPECIAL

CIRCUMSTANCES OF BIRTH THROUGH THE ENFORCEMENT OF FUTURE ORDERS CAUSING PHYSICAL, EMOTIONAL, AND FINANCIAL IMPOVERISHMENT DUE OR PARTLY DUE TO GENDER BIAS OR POOR USE OF DISCRETION?

Certiorari should be allowed as the child's birth precipitated the divorce. The courts have ignored the abortion issue and the future distresses the birth imposed upon only the Petitioner. This order is not only inequitable, but impossible and unreasonable for Petitioner or any other custodial parent to follow. Petitioner and her daughter should have the freedom to be with maternal family for extended times, especially during the school holiday vacations, as other children are allowed in Illinois. Respondent having the child for all holidays since May 1993, does not show equity.

A choice is not a choice if

Constitutional rights are ignored in the process. Abortion is not a joke, and should not be taken lightly by our Courts. If the incidence of divorce can be viewed by the State Courts as being of so little consequence that the birth and life thereafter of a child can be simply described as "water over the dam", then the Courts do not understand the lifelong impact of this decision. Harris v. Forklift Systems, Inc., (Case No. 92-1168). It was the Petitioner, who alone, preserved and protected this child's birth.

Issues of great importance to the people of the United States and issues of constitutionality should be decided by the Supreme Court of the United States, when State and Trial Courts are inconsistent in their opinions or have not yet specifically expressed an opinion. A

divorce under these conditions should severely limit paternity rights. Women need to know that birth under these circumstances is not a compromise of their constitutional rights, In re Marriage of Diehl, 221 Ill. App. 3d 410 (1991). The Supreme Court needs to clarify the issue of children being considered as property in divorces under any circumstances, and catapult them into positions and places of compassion, sensitivity, hope, healthy environment, and loving households without an emphasis on them as just biological property.

It was the clear intent of the custodial parent at the time of the divorce to give up whatever was necessary to be able to establish a just, sensible, and secure life for her daughter and herself. The courts have continually allowed the Respondent to change the

original settlement pertaining to visitation with this child. These changes have resulted in creating an insecure, unhappy child, and an unjust and restrictive lifestyle for both Petitioner and child. Application of Gault, Ariz. 1967, 87 S. Ct. 1428, 387 U.S. 1, 18 L.Ed. 2d 527.

This order makes life's simple pleasures, routines, and emergencies contempt or court possibilities if they conflict with this rigid visitation schedule. It takes away both mother and child's constitutional rights of freedom and religion. Tisckos, 161 Ill.App. 3d 302 (4th Dist. 1987). In Petitioner's mid-life years, she is confined to Bloomington, Illinois so tightly and is severely restricted from being with her two sons living in Springfield, Missouri; her parents and brother in Valparaiso,

Indiana; and most other relatives in the New England States, from where she originated. A court should not infringe upon these rights and obligations.

The case at bar is somewhat complex. There are many issues to consider. The most important one being the emotional and financial consequences Jill Brown is forced to endure because this case has not been looked at carefully from the beginning. Case law in Illinois supports visitation that is not punitive and truly in the best interest of a child. It does not support child abuse and does allow for restrictions and accommodations when necessary.

After close examination of this inequitable, rigid and punitive order it is easy to see that Petitioner and her daughter's constitutional freedoms have been all but taken away last year for the

first time in six years due to the three/four day mandated visitation schedule without exceptions. This freedom denied to Petitioner and her daughter violates the very reasons the Constitution was written in the first place. Freedom to live, to choose, and to worship freely are guaranteed by that Constitution.

The trial court has now made it mandatory the mother and child make new changes in their lives that do not consider the best interest of the child, as she is now limited severely in the amount of time she can visit with her grandparents, has less time being with peers and the spontaneity of life has been totally stripped from her and her mother. She no longer can enjoy summer Bible School in Valparaiso, Indiana with her cousins and friends, as she has had for the past three years. She no longer can

go to dinner with her father when it is convenient for both of them because the second Court order states that no exceptions to the order are allowed. She is now going to be deprived of the last few years she might have with her grandparents before age and illness take their toll. Lawyer, 37 Ill. Dec. 540 (1980). Regan v. Regan, Ill Dec. 153. Ill. App. 3d So., 368 N.E. 2d 552 (1977).

It is unreasonable for any child and mother not to have some extended vacations together. It is simple to see that giving non-custodial parent a week (two in the future) and not the other is inequitable.

Equal justice under the law is being violated in this case and sexual harassment and duress has prevailed since the Respondent discovered the Petitioner was pregnant and not willing to abort the baby. This Court order definitely limits

Petitioner's job performance due to restrictions and indicates the Court's lack of concern for the emotional stability for either Petitioner or her daughter.

The abortion issue and the consequences the birth of the child precipitated, confirms the gender bias in the Illinois Courts toward women and children, especially female children. Both orders in the case at bar contain punitive and inequitable visitation schedules clearly not in the best interest of either mother or child.

Further, some statements made in the orders are contrary to the record, and even if it is not at the requested Reconsideration hearing, Petitioner should have been allowed to supply the court with the necessary information to make a just decision.

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CONCLUSION

The May 20, 1993 Appellate order should be vacated and the parties expected to comply with their original visitation agreement. If this highest court declines, the case should be remanded with instructions to uphold and preserve the very Constitution that gave Petitioner a choice to have and protect this baby, and will not now restrict her freedom of life which that same Constitution guarantees for all.

Respectfully submitted,

Peggy Brown

PEGGY BROWN
Petitioner

pro se

APPENDIX

Post Decree Order . . . . . App. 1

Respondent's Motion to Reconsider and set Child Support . . . . . App. 1

Motion to Appeal . . . . . App. 1

Motion for Leave to Appeal . . . App. 2

Motion for Reconsideration for Leave to Appeal . . . . . App. 2

Appellee's Motion for Sanctions . App. 3

Appellate Court Order . . . . . App. 4

Circuit Court Order of June 28, 1993 . . . . . App. 26

IN THE APPELLATE COURT OF ILLINOIS
FOURTH DISTRICT

JOHN BROWN,	:	
	:	
Petitioner/Counter-	:	
Respondent/Appellee,	:	No. 87 D 35
	:	Springfield
and	:	1992
	:	
PEGGY BROWN,	:	
	:	
Respondent/Counter-	:	
Petitioner/Appellant	:	

ORDER

Post Decree Order was entered on April 21, 1992.

ORDER

Order denying Respondent's Motion to Reconsider and to Set Child Support on the 24th day of June, 1992.

MOTION TO APPEAL

Motion to appeal to the Fourth District Appellate Court was filed on Jully 22, 1992.

MOTION FOR LEAVE TO APPEAL ___

Motion for Leave to Appeal to the Illinois Supreme Court denied.

MOTION FOR RECONSIDERATION

Motion for Reconsideration for Leave to Appeal to the Illinois Supreme Court denied on November 17, 1993.

IN THE APPELLATE COURT OF ILLINOIS
FOURTH DISTRICT

John P. Brown, Petitioner:
: No. 4-92-0607
v : Springfield
: 1993
Margaret A. Brown, Respondent

ORDER

AND NOW, this 20th day of May, 1993, it is ordered as follows:

___X___ Appellee's motion for Sanctions pursuant to Supreme Court Rule 375 which was taken with the case is DENIED.

App. 4

IN THE APPELLATE COURT OF ILLINOIS
FOURTH DISTRICT

John P. Brown, Petitioner:
: No. 4-92-0607
v : Springfield
: 1993
Margaret A. Brown, Respondent

Appeal from the Circuit Court of McLean County, No. 87D35.

BEFORE: HONORABLE LUTHER H. DEARBORN, JUDGE PRESIDING.

ORDER

This is an appeal by respondent counter-petitioner Margaret A. Brown, a/k/a Peggy Brown (hereinafter respondent), from an order of the circuit court of McLean County concerning modification of the order of dissolution of her marriage to petitioner counter-respondent John P. Brown (hereinafter petitioner), who also sought modification of the judgment of dissolution. However, the focus of this appeal concerns the

rulings regarding the parties' minor daughter, Jill.

The issues raised on appeal are (1) whether the modification of petitioner's visitation with his daughter Jill was against the manifest weight of the evidence or amounted to an abuse of discretion; (2) whether the refusal of the trial court to modify the child support with regard to Jill amounted to an abuse of discretion; and (3) whether the trial court's denial of respondent's request that petitioner pay her attorney fees was an abuse of discretion. We affirm.

There is no need to recite the facts at length. The parties and this court are well aware of the facts.

In seeking to modify a prior order with regard to visitation, the party seeking modification has the burden of proving that the modification is in the

child's best interest. (Lyons v. Lyons (1992), 228 Ill. App. 3d 407, 409, 591 N.E.2d at 1008.

The courts of this State have consistently held that a determination of visitation is a matter within the discretion of the trial court. (In re Marriage of Diehl (1991), 221 Ill. App. 3d 410, 429, 582 N.E.2d 281, 294; In re Marriage of Brophy (1981), 96 Ill. App. 3d 1108, 1112, 421 N.E.2d 1308,1311; In re Marriage of Lawyer (1980), 82 Ill. App. 3d 198, 202, 402 N.E.2d 430, 433; Creichton v. Creichton (1979), 75 Ill. App. 3d 326, 329, 393 N.E.2d 1319, 1321.) Of course, the standard of review for child custody and visitation issues is the same. Rodely v. Rodely (1963), 28 Ill. 2d 347, 350, 192 N.E.2d 347, 349.

In attempting to establish that the visitation as ordered by the trial court

in the case at bar was not in the child's best interest, respondent relies on her testimony that petitioner wanted the respondent to get an abortion after the parties learned of the child's conception and evidence presented at an earlier hearing in 1988 that petitioner allowed Jill to be physically abused by her brother Jarrod during visitation.

We agree with the trial court's assessment that the parties' discussion concerning abortion was water over the dam. Petitioner denied these communication. Such an argument is self-centered and certainly not relevant considering the evidence presented. There is nothing in the record which suggests the petitioner does not love his daughter, show her affection, or give her the attention she deserves. Nor is there any such evidence that petitioner abused Jill

or condoned or allowed such abuse.

The custody and visitation issues were originally addressed by the trial court in the order of July 26, 1988, an order which approved the agreement of the parties. As a result of that order, petitioner was given sole care, custody, control, and education of the parties' three minor sons, John W. (born October 18, 1971), Jarrod (born July 2, 1974), and James (born November 6, 1975). Respondent was given sole care, custody, control and education of their minor daughter, Jill (born July 4, 1885). Each party was entitled to "liberal and reasonable rights of visitation" with the child or children in the other's custody upon reasonable notice and at reasonable times and places. Each party was ordered to support the child or children in that party's custody, based upon the financial

inability of either party to contribute support to the child or children in the custody of the opposing party. All medical, dental, orthodontia, optical, or health expenses of the children not covered by insurance was to be paid by the custodial parent. The issue of the college education of the children was reserved until such time as each child was of sufficient age and demonstrated a propensity to attend college. Each custodial parent was allowed to claim as a deduction for Federal and State income-tax purposes the child or children in their custody.

Since that time, the parties have been in court on a number of occasions battling over petitioner's visitation with Jill. At the time of the modification hearings which are the subject of this appeal, Jill was six years old and Jarrod,

then 17, had moved in with respondent and Jill.

In the April 21, 1992, order regarding modification of the judgment of dissolution, the trial court made the following findings of fact with regard to visitation: (1) the circumstances that resulted in the restricted visitation of petitioner with Jill had changed; (2) Jarrod was now living with respondent, and petitioner had remarried and was residing with his wife and stepdaughter so that a more normal type of visitation between petitioner and Jill would be appropriate; (3) what either party once thought about the arrival of the young daughter carried little weight at this point; (4) since petitioner had had visitation for some time, the question of whether he should have visitation at all was not at issue; and (5) since Jill was young and contact

with petitioner had been limited, a change in visitation should be gradual to allow for adjustments. As a result, the trial court ordered that petitioner's visitation with Jill shall be as follows.

1) Overnight weekend visitation once per month, from Friday at 4:30 p.m. until Sunday at 6:30 p.m. for six months, beginning March, 1992.

2) Beginning September, 1992, the Petitioner, JOHN BROWN, shall have overnight visitation every other weekend from Friday at 4:30 p.m. until Sunday at 6:30 p.m.

3) After February, 1993, Petitioner, JOHN BROWN, shall have additional visitation of one week in the summer.

4) Beginning in 1994, the Petitioner, JOHN BROWN, shall have two weeks visitation each summer.

5) The Petitioner, JOHN BROWN, shall continue to have one evening per week visits with Jill Brown on Tuesday or Thursday, from 4:30 p.m. until 6:30 p.m."

The order further provided that petitioner was to have Jill on Father's Day, respondent was to have Jill on Mother's Day, and the parties were to have Jill on alternating major holidays as designated in the order.

Respondent does not dispute the current findings of the trial court that there had been a change in circumstances. There was no evidence in the current hearing that the problems that existed in 1988 were ongoing. Moveover, if Jarrod was the problem, he has now moved in with respondent and Jill.

Respondent attempts to convince this court that the trial court's order is

incorrect because the child is in danger on visitation. First, the evidence simply does not support such a conclusion. Second, the respondent's cited cases also do not support the argument.

"The best interest of the child is normally fostered by having a healthy and close relationship with both parents. (In re Marriage of Brophy (1981), 96 Ill. App. 3d 1108, 1112, 421 N.E.2d 1308. 1311)" (Lyons, 228 Ill. App. 3d at 410, 591 N.E.2d at 1008.) The question is this case is not whether visitation should be abated, but in what form it should be implemented. Liberal visitation is the rule in this State, and restricted visitation is the exception. Diehl, 221 Ill. App. 3d at 429, 582 N.E.2d at 294.

In her reply brief, respondent complains that she gave up property rights which cannot be modified in order to be

allowed to restrict the visitation of petitioner with Jill. This argument has no merit. Parties to a dissolution proceeding cannot bargain away their children's interests. (Blisset v. Blisset (1988), 123 Ill. 2d 161, 168, 526 N..E.2d 125, 129.) Clearly, the parties could not by agreement provide for a visitation order which was nonmodifiable regardless of the child's best interests. With regard to visitation, the modification order from which this appeal was taken is not an abuse of discretion or against the manifest weight of the evidence.

The next issue to be considered is whether the refusal of the trial court to modify the child support with regard to Jill amounted to an abuse of discretion. The trial court may order a modification of child support upon showing of substantial change in circumstances.

(Ill. Rev. Stat. 1991, ch. 40, pars, 505, 510 (a).) Certainly, a change of custody is a substantial change in circumstances (In re Marriage of White (1990), 204 Ill. App. 3d 579, 582, 561 N.E.2d 1387, 1389), and the trial court in the case at bar found a substantial change in circumstances, but still declined to modify child support under the circumstances established by the evidence.

> "Under sections 505 and 510 of the Illinois Marriage and Dissolution of Marriage Act (Act) (Ill. Rev. Stat. 1991, ch. 40, pars. 505,510), the trial court has discretion to set and modify child support as it deems appropriate. (In re Marriage of Harmon (1991), 210 Ill. App. 3d 92, 96, 568 N.E.2d 948, 951.) We will not disturb any child support award or modification unless the trial

court has abused its discretion. (See Blisset v. Blisset (1988), 123 Ill 2d 161, 166-67, 526 N.E.2d 125, 127-28.) An abuse of discretion occurs only when no reasonable person would take the view adopted by the trial court. In re Marriage of Partney (1991), 212 Ill. App. 3d 586, 590, 571 N.E.2d 266, 269." In re Marriage of Carpel (1992), 232 Ill. App. 3d 806, 815, 597 N.E.2d 847, 854.

The trial court, in its order of April 21, 1992, made the following findings: (1) petitioner's gross annual income was $68,000, plus interest income and occasional bonus income; (2) respondent's gross income was $3,230 per month; (3) petitioner;s current wife was employed and had a daughter for which she received child support; (4) respondent had

not remarried; (5) on July 26, 1988, petitioner was awarded custody of the boys, respondent was awarded custody of Jill, and neither party was ordered to pay child support; (6) although at that time petitioner's income was greater than respondent's petitioner was taking on custodial responsibilities for more of the children and was required to pay marital debts; (7) there was a substantial change in circumstances in that John was now attending college, Jarrod will attend college, James may or may not attend college, and Jill was six years old; and (8) in this situation, the statutory percentage minimum child support guidelines were not useful. Based on these findings of fact, the trial court made the following orders:

"A) That the Petitioner, JOHN BROWN, shall have the sole

responsibility for tuition, fees, room and board, and book expenditures necessitated for four years of higher education at Illinois State University, reduced by the scholarship John Brown, Jr. [,] receives as a tennis player.

B) That the Petitioner, JOHN BROWN, shall have the sole responsibility for tuition, fees, room and board, and book expenditures for four years of higher education at Illinois State University for Jarred [sic] Brown. If Jarred [sic] Brown resides with the Respondent while attending Illinois State University, the Petitioner, JOHN BROWN, shall pay to the Respondent, PEGGY BROWN, each semester that Jarred [sic] Brown lives with her, the amount that would represent room and board that would

otherwise be payable to Illinois State University for that semester, or those semesters, payable to her as of the time it would be due to the university.

C) That the Petitioner, JOHN BROWN, shall pay to the Respondent, PEGGY BROWN, for child support for Jarred [sic] Brown, the sum of $600.00 per month for fifteen months, beginning March 1, 1992, and each month thereafter, for a total of fifteen months. An Order for Withholding shall be entered effective immediately.

D) The Petitioner's request for contribution for the college education expenses for James Brown is deferred until such time until the child demonstrates a propensity to attend college."

Until James is emancipated, this remains a split custody case. In In re Marriage of Keown (1992), 225 Ill. App. 3d 808, 812, 587 N.E.2d 644, 646-47, this court stated:

> "The guidelines set forth in section 505 of the Illinois Marriage and Dissolution of Marriage Act are to be considered by the trial court in determining child support. (Ill. Rev. Stat. 1989, ch. 40, par. 505.) The guidelines shall be applied in each case unless the court, after considering evidence presented on all relevant factors, finds a reason for deviating from the guidelines. (Ill. Rev. Stat. 1989, ch. 40, par. 505(a)(2).) The failure to strictly comply with the guidelines is appropriate in split custody cases. Here there are three children, whose

parents are equally responsible for their support. Petitioner has physical custody of two children, the respondent physical custody of one. A strict mathematical application of the guidelines where there is split custody of the children is not contemplated by the statute."

Here, respondent had been supporting Jill without contribution from petitioner; likewise petitioner had been supporting the parties' three sons without contribution from respondent. It is true Jarrod moved in with respondent, but petitioner was ordered to pay support for Jarrod calculated from the date Jarrod moved in with her. In addition, petitioner was ordered to pay all the college expenses of John and Jarrod and continued to have custody of James.

The refusal of the trial court in the

case at bar to modify child support at this time was not an abuse of discretion. Certainly, as the circumstances with regard to the boys changes, petitioner will have an opportunity to seek an order that petitioner pay child support for Jill.

The final issue to consider is whether the trial court's denial of respondent's request that petitioner pay her attorney fees was an abuse of discretion. In Carpet (232 Ill. App. 3d at 832, 597 N.E.2d at 866), this court stated as follows:

> "[A] court still has discretion to award attorney fees under section 508(a) of the Act when one party lacks sufficient financial resources to obtain or retain legal representation. (Ill. Rev. Stat. 1989, ch. 40, par. 508(a).) A trail

court abuses its discretion in not awarding attorney fees under section 508(a) of the Act when the evidence reveals a great disparity in actual earnings and earning capacity. (In re Marriage of Gable (1990), 205 Ill. App. 3d 696, 700, 563 N.E.2d 1215, 1217-19; In re Marriage of Edsey (1990), 199 Ill. App. 3d 39, 57, 556 N.E.2d 552, 563.) The trial court can award attorney fees when the spouse seeking relief demonstrates (1) financial inability to pay, and (2) the ability of the other spouse to pay. (Edsey, 199 Ill. App. 3d at 57, 556 N.E.2d at 563.) Financial inability exists when payment would strip a party of his or her means of support and would undermine his or her economic stability, but it does not require the party to show

> destitution. Gable, 205 Ill. App. 3d at 700, 563 N.E.2d at 1218; Edsey, 199 Ill. App. 3d at 57, 556 N.E.2d at 563."

Payment of attorney fees is primarily the responsibility of the party for whom the services were rendered, and the trial court's order with regard to attorney fees will not be overturned on appeal unless it is shown to result from an abuse of discretion. In re Marriage of Ziemer (1989), 189 Ill. App. 3d 966, 969, 546 N.E.2d 229, 230.

Contrary to respondent's argument, Carpel does not stand for the proposition that a gross disparity in income, alone, justifies an award of attorney fees. The spouse seeking attorney fees must still demonstrate an inability to pay the fees. Respondent has not done so in the case at bar, and the denial by the trial court of

respondent's request for attorney fees was not an abuse of discretion.

For the foregoing reasons, the judgment of the circuit court of McLean County is affirmed.

Affirmed.

McCULLOUGH, J., with STEIGMANN, P.J., and COOK, J., concurring.

IN THE CIRCUIT COURT OF ILLINOIS
ELEVENTH JUDICIAL CIRCUIT
COUNTY OF MCLEAN

IN RE THE MARRIAGE OF	:	
	:	
JOHN BROWN,	:	
	:	
Petitioner,	:	
	:	
and	:	No. 87 D 35
	:	McLean Co.
PEGGY BROWN,	:	June 28, 1993
	:	
Respondent.	:	

ORDER

THIS CAUSE coming on for hearing on the Petitions for Rule to Show Cause filed by the Petitioner, JOHN BROWN; the parties being present in person and by their respective attorneys; the court having considered the arguments of counsel and evidence of the parties; the Court finds as follows:

1. While the visitation decisions made to date by Respondent concerning the child, Jill, may not have been in complete

good faith, the Court cannot find that the actions of the Respondent at this point rise to the level of willful contempt. Therefore, the Court finds no willful contempt of court and the request for attorneys fees is denied.

2. That additional clarification of the prior Order is necessary to prevent further problems concerning visitation by Petitioner with the minor child, Jill.

IT IS HEREBY ORDERED, ADJUDGED and DECREED as follows:

A. With respect to weekend visitation, weekend visitation by the Petitioner shall commence on May 14, 1993, at 4:30 p.m. to May 17, 1993, at 6:30 p.m. and every other Friday through Sunday at like hour. There shall be no variation by either party from the following dates:

	1993
May	14 - 17
May	28 - 30
June	11 - 13
June	25 - 27
July	9 - 11
July	23 - 25
August	6 - 8
August	20 - 22
September	3 - 5
September	17 - 19
October	1 - 3
October	15 - 17
November	12 - 14
November	26 - 28
December	10 - 12
December	24 - 26

	1994
January	7 - 9
January	21 - 23
February	4 - 6
February	18 - 20
March	4 - 6
March	18 - 20
April	1 - 3
April	15 - 17
May	13 - 15
May	27 - 29
June	10 - 12
June	24 - 26
July	8 - 10
July	22 - 24
August	5 - 7
August	19 - 21
September	2 - 4
September	16 - 18
October	14 - 16
October	28 - 30
November	11 - 13

November	25 - 27
December	9 - 11
December	23 - 25

B. Week day visitation shall be one (1) evening per week on Tuesday or Thursday evening from 4:30 p.m. until 6:30 p.m. The week day visitation shall be on Tuesday before each weekend visitation by the Petitioner and on the Thursday following each weekend visitation by Petition.

C. Petitioner shall have visitation each and every Father's Day from 9 a.m. until 6:30 p.m. which would include the evening meal together. The Respondent shall have visitation each and every Mother's Day from 9 a.m. until 6:30 p.m. which would include an evening meal.

D. All holiday visitations shall be from 9 a.m. until 6:30 p.m., unless otherwise indicated. The parties shall have visitation with the minor child,

Jill, on the following holidays:

(1) 4th of July - Petitioner shall have visitation on July 4, 1993 and the Respondent shall have visitation on July 4, 1994. The parties will then alternate each year thereafter.

(2) Thanksgiving - Petitioner shall have visitation for Thanksgiving, 1993, from 4:30 p.m. on Wednesday, November 24, 1993, until November 28, 1993, at 6:30 p.m. as this holiday for 1993 falls immediately before his regularly scheduled weekend visitation. The Respondent shall have visitation for Thanksgiving, 1994. The parties will then alternate every year thereafter.

(3) Christmas - Petitioner shall have visitation for Christmas Day, 1993 and the Respondent shall have visitation on Christmas Day, 1994. The

parties will then alternate each year thereafter.

(4) News Year Day - Petitioner shall have visitation on News Years Day, 1994, and the Respondent shall have visitation on New Years Day, 1995. The parties will then alternate each year thereafter.

(5) Easter - Respondent shall have visitation on Easter Day, 1994, since the holiday falls on a scheduled weekend for visitation by the Petitioner. The Petitioner shall have visitation on Easter Day, 1995. The parties will then alternate each year thereafter.

E. Petitioner shall have summer visitation as incorporated within the Order of February, 993, with the minor child, Jill, as follows:

(1) Petitioner will have visitation beginning at 4:30 p.m. on

Friday, July 2, 1993, until Friday July 9, 1993, at 4:30.

(2) Petitioner will have visitation beginning at 4:30 P.m. on Friday, June 17, 1994, until Friday July 1, 1994 at 4:30 p.m. or, in the alternative, two (2) weeks beginning at 4:30 p.m. on Friday, July 15, 1994, until July 29, 1994, at 4:30 p.m. The Petitioner will notify the Respondent of his exact summer visitation schedule for 1994 and every summer thereafter at least 30 days before visitation is desired.

F. The Petitioner shall be responsible for picking up and delivering the minor child, Jill, at the Respondent's home for all visitation periods.

G. In the event the child is unable to attend visitation with the Petitioner for medical reasons, the Respondent shall provide a doctor's

confirmation of the medical reason. Respondent is further directed to provide any releases necessary for Petitioner to access medical information concerning the child minor child, Jill. Respondent shall further provide to Petitioner information concerning the child's school activities and to sign any releases necessary for Petitioner to have access to the child's school records.

H. There is no just reason to delay the enforcement or appeal from this Order.

Dated: June 25, 1993

ENTER:

G. Michael Prall

JUDGE

CERTIFICATION OF SERVICE

On the 14 day of February, 1994, copy hand delivered to office of Scott Drazewski, 306 N. Center, Bloomington, Il 61701, 309-827-0044.

Peggy Brown